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SUBJECT: JORDAN IPR PROBLEMS AND SOLUTIONS: PART II - GAPS  
IN THE LEGAL-REGULATORY FRAMEWORK

REF: AMMAN 8330 AND PREVIOUS

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THIS IS THE SECOND IN A SERIES OF CABLES ON INTELLECTUAL  
PROPERTY RIGHTS IN JORDAN.

1. (SBU) SUMMARY: Jordan's governmental infrastructure to protect IPR is decent, but most observers agree that human resource capacity building is a pressing need for that infrastructure to function effectively. The Ministry of Industry and Trade's Industrial Property Protection Directorate, and the National Library within the Ministry of Culture, are the two focal points for policies on patents, trademarks and copyright. The Customs Department, police, an anti-fraud unit, and the Jordan Institute of Standards and Metrology (JISM) all play a role in IPR enforcement, as do prosecutors and the judiciary. A cadre of Western-trained lawyers who specialize in IPR are able to assert their clients' rights; and the Jordan Intellectual Property Association (JIPA) brings together a strong group of stakeholders, including Jordan's sophisticated software development community.

2. (SBU) Despite this network of IPR supporters and Jordan's relative leadership on IPR in the region, the laws and regulations underpinning IPR protection lack coherence, and can lead to sub-optimal ad hoc solutions to commonly recognized IPR protection problems. The passage of amendments to key laws, and a better system of regulations and administrative directives, could improve communication between agencies, enhance enforcement efforts, and bring a common judicial standard to civil and criminal cases in the IPR field. The Ministry of Industry and Trade has formed two committees to address IPR deficiencies, and the National Library Director General is establishing a copyright enforcement committee. Minister of Industry and Trade Sharif Zu'bi has promised to press for stricter penalties for infringement, and the GoJ is continuing an effective public awareness campaign to support IPR enforcement. END SUMMARY.

High IPR Aspirations

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3. (SBU) Jordan's international IPR commitments span a wide gamut: over the past two years, Jordan acceded to the WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty, the Patent Cooperation Treaty, and the Madrid Agreement Concerning the International Registration of Marks.

In March, Jordan issued an amended Copyright Law. In the Free Trade Agreement (FTA) with the U.S., IPR commitments constitute 29 paragraphs, a quarter of the entire document. The GoJ faces a serious task in meeting all its commitments on patents, trademarks, copyright, plant varieties, and special measures regarding regulated pharmaceuticals or agricultural chemical products, and other IPR areas.

4. (SBU) Bringing together all the elements that implement these IPR commitments is a challenge for the GoJ. Coordinating the nine main Jordanian laws on IP, as well as laws on criminal procedures, civil procedures, criminal penalties, and customs is a major task, according to Tawfiq Tabaa, a U.K.-educated IP lawyer practicing in Amman. Tabaa successfully mounted the Business Software Alliance private campaign against software pirates. He works with a team that finds computer hardware suppliers who sell "free" software, then notifies the National Library, which raids the shop during the sale of pirated goods. The first step for the plaintiff is to decide whether to file a complaint in conjunction with a criminal case, go for a separate civil case, or proceed with both cases, either separately or together. Tabaa is satisfied with the "ex officio" seizure powers granted by the copyright law - the National Library can and does confiscate infringing material from any location in the kingdom. However, he is concerned about delays in reaching a judgment (usually over a year, and up to three-and-a-half years if the defendant is aggressive), the lack of communication by prosecutors, and the ineffectual

punishments meted out by judges; most penalties are no more than a couple hundred Jordanian dinars - about USD \$280 - when the maximum fine is JD 6000.

#### Implementation Problems

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15. (SBU) Tabaa's experience is illustrative of other drawbacks of the current IPR system. Under the Customs Law, Jordanian Customs may exercise "border measures" to retain suspected counterfeits or other IP infringing items, but only for eight days. Customs must attempt to inform the probable right holder, who must then file a complaint within the eight days; otherwise, in the absence of a complaint the materials must be released by law. (Article 4, paragraph 26 of the FTA, calls for "border measure actions ex officio, without the need for a formal complaint by a private party or right holder.") Customs also has difficulties dealing with the flood of counterfeits into free zones, where Customs is called on to value goods only if they are entered into the local economy.

16. (SBU) Court rulings and legal incompatibilities also reveal spottiness in the GoJ's IPR system. When a prominent international law firm filed a complaint against a product counterfeiter under "unfair competition" laws, the higher court eventually threw out the case because the plaintiff had not registered the mark in Jordan. The ruling took no account of the unfair competition complaint. IP lawyers note that there are clear contradictions between trade secrets and unfair competition laws. There are also serious unresolved issues regarding pharmaceutical IPR protections, although the relevant GoJ authorities have promised to work on these issues (to be reported septel).

#### But Committees Considering Next Steps

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17. (SBU) Under the FTA, Jordan was accorded a transition period until December 2004 before being required to fully implement FTA IPR provisions. GoJ officials are aware of these obligations. At the Ministry of Industry and Trade, Minister Sharif Zu'bi has appointed a committee - inviting members from all of the key IPR enforcement agencies - to examine how to upgrade and enforce patent and trademark laws and regulations. A separate committee on 'ex officio' powers examined the problem at the borders, and recommended that such powers be granted to the Jordan Institute for Standards and Metrology (JISM). Amendments reportedly will be required to both the JISM Law and the Customs Law. NOTE: It remains unclear whether GoJ Customs will surrender its mandate to confiscate and retain counterfeited brand name products or pirated goods. Customs may retain the power, and given its larger presence at the border, the Customs staff or a specially trained cadre should probably continue to screen for fakes. The issue may remain unresolved until Parliament passes the relevant amendments. Embassy has requested copies of the proposed Customs amendments. END NOTE.

18. (SBU) At the National Library, Director General Mamoun Talhouni is focusing on the IPR public awareness campaign (reftel), including by giving public lectures on IPR violations. Talhouni is now convinced that he also needs to form a committee to review enforcement of copyright laws. He plans to include the police (which accompanies members of the six-strong NL copyright enforcement team on raids), Customs, the Judicial Council, and the Anti-Fraud Unit in the GoJ intelligence service, as well as JIPA. Talhouni believes that newly-installed Minister of Culture Adel Tweisi will support his efforts. He will recommend more training for the judiciary, among other initiatives.

#### USAID Gap Analysis; More Steps Taken

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19. (SBU) Consultants associated with USAID/Jordan's Achievement of Market-Friendly Initiatives and Results (AMIR) Program will be conducting a thorough gap analysis of Jordan's major international IPR protection commitments versus the laws, regulations and directives currently on the books and will submit their report by mid-January. Jordanian counterparts are keenly interested in learning the results of this study; members of the MOIT and National Library committees will study the report closely. (COMMENT: We expect them to act on the results, as well. END COMMENT.)

110. (SBU) In a sign of how the GoJ plans to fill the gaps in its IPR legal-regulatory framework, Minister Zu'bi told Econ/C December 8 he was shocked to learn from the National Library DG that judges were handing out 20 JD fines for copyright infringement, resorting to criminal penalty laws and avoiding the Copyright Law fines of up to 6000 JD. Zu'bi told Econ/C he would be requesting that the Judicial Council issue guidance for judges on penalties under the Copyright Law.

¶11. (SBU) COMMENT: 2006 looks to be a year of significant improvements for IPR protection in Jordan. All relevant government bodies are engaged in studying the problems and looking for solutions. The AMIR consultants conducting the gap analysis have a strong reputation in intellectual property law. We are impressed by Minister Zu'bi's dedication, and believe that he and others want to project a Jordan where investors can be assured their intellectual property interests are fully protected.

¶12. (U) Next installment on IPR: pharmaceuticals.

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